

**BEFORE THE
COMMISSION ON LANDLORD TENANT AFFAIRS
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

Myra L. Oliver and
Jenise V. Plourde

Complainants

V.

Jin He Jiang and
Steven Cheng

Respondents

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Case No. 31934

Rental Facility: 2301 Greenery Lane, Apt. 203, Silver Spring, Maryland 20906 (License # 56558)

DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland ("Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 29th day of December, 2010, found, determined, and ordered, as follows:

BACKGROUND

On September 3, 2010, Myra L. Oliver and Jenise V. Plourde, ("Complainants"), former tenants at 2301 Greenery Lane, Apt. 203, Silver Spring, MD ("Condominium"), a licensed rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs, ("Department") in which they alleged that their former landlords, Jin He Jiang and Steven Cheng, owners of the Condominium ("Respondents"): (1) failed to refund any portion of their \$1,900.00 security deposit plus accrued interest within 45 days after the termination of their tenancy, in violation of Maryland Code (1954, 2003 Repl. Vol., 2007 Suppl.), Real Property Article, Section 8-203(e)(1) ("Real Property Article"); and, (2) failed to send them an itemized list of damages, together with a statement of the costs actually incurred to repair those damages, within the 45 days after the termination of their tenancy, in violation of Section 8-203 (g)(1) of the Real Property Article, and therefore, pursuant to Section 8-203(g)(2), the Respondents have forfeited the right to withhold any portion of their security deposit plus accrued interest for damages.

The Complainants assert that they did not damage the Condominium in excess of ordinary wear and tear during their tenancy, and therefore, the Respondents had no reasonable basis to withhold any portion of their security deposit plus accrued interest.

The Respondents contend that the Complainants damaged the Condominium in excess of ordinary wear and tear during their tenancy, and the costs they incurred to repair the damages exceeded the amount of the security deposit the Complainants paid.

The Complainants are seeking an Order from the Commission for the Respondents to refund their entire \$1,900.00 security deposit plus accrued interest; and a penalty of up to three times the amount unreasonably withheld.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on November 2, 2010, the Commission voted to hold a public hearing on December 14, 2010. The public hearing in the matter of Myra L. Oliver and Jenise V. Plourde v. Jin He Jiang and Steven Cheng, relative to Case No. 31934, was held on December 14, 2010.

The record reflects that the Complainants and the Respondents were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were one of the Complainants, Myra L. Oliver, and one of the Respondents, Steven Cheng.

Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also entered into evidence one exhibit offered by the Complainants, a series of photographs taken during the tenancy showing damages relative to a water leak in the Condominium, identified as Complainant's Exhibit No.1.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Commission makes the following Findings of Fact:

1. On March 21, 2008, the Complainants signed a two year lease agreement ("Lease") for the rental of the Condominium, which stated that the tenancy commenced on April 15, 2008, and expired on March 31, 2010, for a monthly rent of \$1,400.00. At the expiration of the Lease term, the Complainants remained in the Condominium as tenants on a month to month basis.
2. On or about March 21, 2008, the Complainants paid the Respondents a security deposit in the amount of \$1,900.00 (\$1,400.00 plus \$500.00 pet deposit), which amount is receipted in the Lease (Commission's Exhibit 1, Page 8 and Page 15).
3. On April 13, 2010, the Complainants gave the Respondents notice of their intention to vacate the Condominium by May 15, 2010; notice accepted by the Respondents.
4. On May 15, 2010, the Complainants vacated the Condominium, having paid rent in full to the Respondents through that date.

5. The Commission finds credible the Respondents' testimony that there was evidence of damage at the Condominium after the Complainants vacated. The Commission also finds credible the Respondents' testimony that the alleged damages were repaired after the Complainants vacated the Condominium; however, the Respondents failed to produce any probative evidence that they incurred any actual costs to repair damages to the Condominium after the termination of the Complainants' tenancy.

6. The Commission finds that the Respondents did not send to the Complainants at their last known address, within 45 days after the termination of their tenancy, an itemized list of damages being claimed against the Complainants' security deposit together with a statement of the costs actually incurred to repair that damage.

7. The Commission finds that the Respondents failed to credit the Complainants' security deposit with the correct amount of simple interest which had accrued on their \$1,900.00 security deposit from the commencement of their tenancy, April 15, 2008, until the termination of their tenancy, May 15, 2010.

CONCLUSIONS OF LAW

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. Pursuant to Section 8-203(f)(1)(i) of the Real Property Article, "The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage by the tenant or the tenant's family, agents, employees, guests or invitees in excess of ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings owned by the landlord."

Further, pursuant to Section 8-203(g)(1) and (2) of the Real Property Article, "If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred, and "If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages."

The Commission concludes that the Respondents failed to send such a list to the Complainants within 45 days after the termination of their tenancy, which constitutes a violation of Section 8-203(g)(1) of the Real Property Article. Therefore, pursuant to Section 8-203(g)(2), the Respondents forfeited their right to withhold any portion of the Complainants' security deposit for damages.

2. The Commission concludes that the Respondents' failure to pay the Complainants interest which had accrued on their security deposit constitutes a violation of Section 8-203(e)(1) of the Real Property Article, and has created a defective tenancy.

3. The Commission concludes that the Respondents' failure to handle and dispose of the Complainants' security deposit (\$1,900.00) plus accrued interest (\$114.00) in accordance with the requirements of the applicable provisions of Section 8-203, "Security deposits," of the Real Property Article, has caused a defective tenancy.

4. Although the Commission concludes that the failure by the Respondents to refund any portion of the Complainants' security deposit was unreasonable and constitutes a violation of Section 8-203 (e)(4) of the Real Property Article, to award a penalty, as requested by the Complainants, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Respondents' conduct in wrongfully withholding all or part of the Complainants' security deposit, whether the Respondents acted in good faith, an any prior history of wrongful withholding of a security deposit. Based on the evidence, the Commission concludes that the Respondents' conduct did not rise to the level of bad faith or egregiousness necessary to award a penalty. Therefore, Complainants' request for such an award is denied.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondents must pay the Complainants **\$2,014.00**, which sum represents the Complainants' security deposit plus accrued interest.

Commissioner Deanna Stewart, Commissioner Jay Hutchins, and Commissioner Nancy Cohen, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondents, Jin He Jiang and Steven Cheng, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check, made payable to Myra L. Oliver and Jenise V. Plourde, in the amount of \$2,014.00.

The Respondents, Jin He Jiang and Steven Cheng, are hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of a Class A civil citation and \$500.00 civil fine, should the Commission determine that the Respondents have not, within thirty (30) calendar days of the date of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney for additional legal enforcement.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland, within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals. Be advised that pursuant to Section 29-49 of the County Code, should the Respondents choose to

appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award (\$2,014.00) if they seek a stay of enforcement of this Decision and Order.

Nancy Cohen, Panel Chairperson
Commission on Landlord-Tenant Affairs